No. 88-263

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

GENERAL MOTORS CORPORATION,
Petitioner,

v.

SHEILA ANN GLENN, PATRICIA F. JOHNS AND ROBBIE NUGENT,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the trier of fact was clearly erroneous in finding that GM's alleged "transfer policy" did not exist, and that therefore GM failed to prove any affirmative defense to its violation of the Equal Pay Act.

2. Whether the trier of fact was clearly erroneous in determining that GM acted in "reckless disregard" of its obligations under the Equal Pay Act.

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 841 F.2d 1567. The opinion of the district court (Pet. App. 20a-49a) is reported at 658 F. Supp. 918.

JURISDICTION

The judgment of the court of appeals was entered on April 15, 1988. On July 1, 1988, Justice Kennedy granted an extension of time until August 13, 1988, within which to file the petition for a writ of certiorari. The petition was timely filed. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATEMENT

The District Court Case [1]

Plaintiffs, three female "Follow Ups," or inventory clerks, filed this Equal Pay Act suit against General Motors Corporation ("GM") on October 28, 1983, alleging that since 1975, the highest-paid female "Follow Up" had been paid less than the lowest-paid of six male "Follow Ups" at GM's Athens, Alabama, facility. GM argued below that the jobs performed by the male and female "Follow Ups" were different. GM also alleged a sole affirmative defense: that the pay disparity resulted from a "transfer policy" to "encourage employees to transfer from hourly positions to salaried positions by maintaining the same rate of pay after transfer." Pet. App. 28a.

The district court found that the jobs in question were "equal" for purposes of the Equal Pay Act ("the Act")—a finding not challenged now by GM—and held that plaintiffs had proved a prima facie violation. The district court also found that GM's alleged "transfer policy" did not exist, and that therefore GM had violated the Act because GM failed to prove its affirmative defense. The district court further found that GM's conduct showed "reckless disregard" of its obligations under the Act and awarded damages accordingly.

The district court's findings were based on the following facts, adduced at trial and in a second evidentiary hearing. In 1975, plaintiff Robbie Nugent was the first "Follow Up" employed by GM's Materials Management Department for the Athens site. R.4(13).[2] Court Ex. 1

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[1] The trial court's statement of the facts of this case in its combined opinion below, set out in Petitioner's Appendix ("Pet. App.") at 20a-49a, and the court of appeals' affirmance, Pet. App. 1a-19a, are incorporated herein by respondents.

[2] Citations to the record are in the form "R.4(182)," where the first number is that of the volume, the second that of the page cited to.

("Agreed Facts") ¶ 17. She was hired "off the street" (from outside GM) after many years of experience in materials management. Agreed Facts ¶ 16. GM told Mrs. Nugent they would start her at the bottom of the salary scale. Agreed Facts ¶ 18.

Two weeks later, GM hired Richard Tanley. R.4(102); R.5(119). Mr. Tanley was hired expressly for the "Follow Up" position, *id.* but was given the title of "Tool Crib Attendant," an hourly job, and was paid more than Mrs. Nugent. *Id.*; P. Ex. 1b, Attachment III.[3] The undisputed evidence was that Tanley never performed the functions of a "Tool Crib Attendant," but instead worked alongside Mrs. Nugent from the beginning, performing the same work as she. R.4(102); R.5(119). About three months later, Mr. Tanley was "transferred" to the salaried "Follow Up" job, with no change in his responsibilities, according to his own testimony. R.5(120). Not only did he retain his higher pay, but he received an additional 10% raise over Mrs. Nugent for doing the same job. R.5(119-20).

In 1979, GM hired Steve Greenlee "off the street" as a "Follow Up." Agreed Facts ¶ 41. GM gave him a 17.5% wage increase over his prior wages—slotting his salary well above that of Mrs. Nugent.[4] R.5(69); R.6(187-88). Mr. Greenlee worked as a "Follow Up" until 1981, and

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[3] Plaintiffs' Exhibit 1b, Attachment III ("Att. III") is GM's response to plaintiffs' discovery seeking identification of all transfers from hourly to salaried jobs at the facility during the relevant period. *See* note 9, *infra*.

[4] GM asserts that Mr. Greenlee was given a higher starting salary because of his "special skills and expertise." However, GM failed to adduce any evidence, and the trial court certainly did not find, that Mr. Greenlee's alleged "experience" enabled him to perform better than Mrs. Nugent, who had held the "Follow Up" job for four years when Greenlee was hired.

continued to be paid more than Mrs. Nugent at all times. R.5(137-38); P. Am. Ex. 26.[5]

Between 1977 and 1979, forklift driver Stephen Downs, "Job Setter" Harold Wales, and "Tool Crib Attendant" Robert Stephenson transferred from their hourly positions to the salaried "Follow Up" position. Agreed Facts ¶¶ 33, 34 (Downs), ¶ 45 (Wales), ¶ 49 (Stephenson). Each received a discretionary pay increase, Att. III, not set by any policy, practice or formula, but set on a "case-by-case" basis. R.6(125, 216). The result in each case was that the male employee was paid more than Mrs. Nugent. P. Am. Ex. 26.

Plaintiffs Patricia Johns and Sheila Ann Glenn moved into the "Follow Up" position from salaried secretarial positions in 1981. Agreed Facts ¶¶ 21, 24 (Johns), 12 (Glenn). Mrs. Johns' was a "lateral" movement; for Mrs. Glenn, it was a "promotion," entitling her to a pay review which allowed her salary to be placed anywhere in the "Follow Up" scale. R.6(136-38, 189-90). GM chose to slot her salary substantially below the lowest-paid male. P. Am. Ex. 26. In contrast, when male machine operators Billy White and Jerry Pepper transferred from their hourly jobs to "Follow Up" positions in 1977, they received discretionary pay raises over their former hourly rates, putting their pay above the incumbent female "Follow Ups." Agreed Facts ¶¶ 49 (Stephenson), 54 (White); Att. III; P. Am. Ex. 26.

The district court found, and GM does not dispute, that throughout the entire relevant period, GM paid its highest-paid female "Follow Up" less than its lowest-paid male "Follow Up." Pet. App. at 3a, 25a; P. Am. Ex. 26. GM did not plead any merit system defense to explain

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[5] The lower courts' findings credit Plaintiffs' Amended Exhibit 26, attached hereto at Appendix 1a-2a, which graphically charts the pay disparity based on undisputed facts of record. *See* R.5(178-80); Pet. App. at 3a-4a, 21a-25a.

the continuing disparity and the district court certainly did not find any merit system. R.5(151). On the contrary, the evidence was that pay increases in the "Follow Up" job were based on the subjective decisions of individual GM supervisors, *see* Pet. App. 38a n.4, who admitted plaintiffs would have to "out-perform" their male colleagues just to "catch up." R.5(155-56).

Despite repeated complaints from each woman about pay inequities between male and female "Follow Ups," R.4(60, 129, 184); Agreed Facts ¶¶ 136-72,[6] GM gave no pay adjustments until after the EEOC issued a finding of "cause" in response to the women's filing EEOC charges. R.4(55-57, 132, 144-46, 172, 175, 186); R.5 (171-72); P. Am. Ex. 26. GM then gave each plaintiff an "inequity adjustment," a GM pay device designed to equalize pay as management found necessary. P. Ex. 45c, 55c, 66a; R.6(203, 222-23); *see* Agreed Facts ¶¶ 202, 203.[7] Yet GM deliberately decided to raise plaintiffs' pay only to a point that still was well short of equality with the males'. R.6(222, 223); P. Am. Ex. 26. Even with this adjustment, the highest-paid woman still made less than the lowest-paid man. *Id.*[8]

GM's defense was its assertion that the pay disparity resulted from a sex-neutral policy to retain salaries upon transfer from hourly to salaried positions. But a GM list

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[6] Mrs. Nugent had complained about pay differences since 1976 to her supervisors and even to Site Manager Ben Yorks, GM's highest local official. Agreed Facts ¶¶ 47-49. Yet, although Yorks told Mrs. Nugent he would "look into" the reason for her unequal pay, he testified he had not heard of the "transfer policy." P. Ex. 12 at 7, 20. Supervisor Bill Baxter's response to Mrs. Nugent's complaints was that she was lucky to be making more than his wife, who was not a GM employee. R.6(262, 263).

[7] Plaintiffs were told that their "inequity adjustment" was based on a "review of salary structures in the Tool Stores Department." Agreed Facts ¶¶ 205, 206.

[8] After receiving her "inequity adjustment," plaintiff Nugent was denied her scheduled pay increase for that year by her supervisors. R.4(59).

of all hourly employees in the Athens facility who transferred to any non-supervisory salaried job during the relevant time revealed that in fact GM consistently discriminated against women who transferred. Of seven such women, five took pay cuts; but of twenty-two comparable male transferees, twenty-one got raises and only one took a cut. P. Ex. 1b, Attachment III.[9] Charles Hough, GM's Personnel Administrator, also testified that five of seven women who transferred actually had received a pay cut. R.6(138-40); P. Ex. 9a at 80; *but see* R.6(163).

The evidence also established that male "Follow Ups" were allowed to move back into hourly jobs during layoffs and then were re-"transferred" to their salaried positions at even higher pay rates. P. Ex. 74, 101, 102; P. Am. Ex. 26. Robert Stephenson twice came back to his "Follow-Up" job from such a "roll-back" and received a pay increase further distancing his salary from that of the female "Follow Ups." P. Am. Ex. 26. In contrast, women in salaried positions who were moved back into hourly jobs during layoffs were forced to take a pay cut upon "re-transfer" to a salaried position. R.6(87-88).

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[9] In response to plaintiffs' interrogatories, GM produced a list of transfers. That list was admitted at trial as P. Ex. 1b, Attachment III, attached hereto at Appendix 2a-6a. Transfers to supervisory positions listed in P. Ex. 1b, Attachment III are excluded from consideration because salary upon transfer to these positions is governed by a set, written formula, R.6(92, 93), and that transfer policy is not relevant here.

At trial, GM submitted a "corrected" list of transfers, showing only three of seven transferring females as taking cuts on transfer. Plaintiffs vigorously attacked the credibility of this list and its proponent, Hough, who changed his trial testimony from his deposition, in which he identified five of seven women transferees as taking pay cuts. R.6(138-40), (163); P. Ex. 9a at 80.

The district court found that GM's "corrected" list was not persuasive evidence of an alleged sex-neutral "transfer policy"; on the contrary, the court concluded that the alleged policy did not exist. Pet. App. at 28a, 38a n.4, 41a n.8.

GM's own witnesses testified that the "practice" regarding transferring employees was subjective and handled on a "case-by-case" basis. R.6(125, 216). Candidates for transfer were hand-picked by department supervisors. R.6(131). The amount of increase (or decrease) in pay upon transfer was not established by any formula, R.6(125, 129, 130), but was left to the discretion of individual decisionmakers. R.6(129, 217-18); *see* Pet. App. 38a n.4.

GM officials unanimously admitted at trial that the alleged transfer policy was nowhere reduced to writing. R.6(94, 156-60, 195-96). GM did not assert the alleged policy in its Answer, R.1(7), but first asserted it two years later at the Pretrial Conference. R.1(35). The superintendent of the department in which plaintiffs worked refused to call GM's approach to salary setting upon transfer a "policy." R.6(245). As the trial court reasonably expected, R.6(158), GM maintains a written compendium regarding salaried position administration, Agreed Facts ¶ 182, but this "black book" contains no mention of the alleged "transfer policy." *Id.*

GM relies on a 1975 "internal report" it introduced at trial, D. Ex. 2, as evidence of official adoption of the policy; however, the most senior GM official who testified for GM at trial, the Personnel Director for the Saginaw Division, testified the 1975 report was buried "somewhere in the recesses and vaults of the General Motors Corporation," that it "does not exist at the Saginaw Division" and that "very few, if any Salary Administrators ever saw it." R.6(231). The alleged "transfer policy" was unknown both to the work force and top management. P. Ex. 27a at 97-99; P. Ex. 12 at 20; R.5(105-106), R.6(153-54). Although GM supervisors set post-transfer salaries with the concurrence of the personnel department, none of the supervisors who testified were aware of the alleged "policy." R.5(121, 155, 168), R.6(246); P. Ex. 11 at 23.

Under examination by the Court, GM's personnel administrator, Charles Hough, admitted that GM paid female "Follow Ups" less *because women were willing to work for less*:

> THE COURT: Have I correctly understood it that the marketplace more or less dictates what you pay, you pay what it takes to get a good person?
>
> THE WITNESS [Hough]: Yes sir, to a certain extent.
>
> * * * *
>
> THE COURT: All right. Now, let me be fair with you and give you a chance to respond to my concern in that connection.
>
> THE WITNESS [Hough]: Okay.
>
> THE COURT: I think you have to take it as given that it's a fact that in Athens, Alabama and thereabouts women historically have made less than men and it didn't take as much to pay them in the marketplace. I'm understanding you to say that it's General Motors' policy, then, if they are hiring a man and a woman for the same position to pay the man what it takes to get him and pay the woman what it takes to get her, even though it may be substantially less?
>
> THE WITNESS [Hough]: Yes, sir.

R.6(160-61). Hough also admitted that he offered Mr. Greenlee "what it took" to get him to accept the job. R.6(108). Richard Tanley, who had since been promoted to supervisor, testified that the salary of "Follow Ups" was determined by "what it took to get them." R.5(137). GM admitted in discovery that it paid men and women different wages for the same work based on "the free operation of the marketplace." P. Ex. 1b, Answer to Interrogatory 3.

After a careful review of the foregoing and other extensive evidence, R.6(270), the district court made a finding that GM had no "transfer policy." Pet. App. at

28a. Instead, the court found, "GM simply pays Follow Ups what it takes to induce them to accept employment." *Id.* Accordingly, the court concluded, GM had violated the Act.

On the issue of whether GM's conduct showed "reckless disregard" for the Act, key among the evidence summarized above was the 1975 "internal GM report," which contained "a review of potential problems that may be raised by a more thorough examination by the EEOC of GM's compensation policies and procedures." D. Ex. 2 at 1. The report acknowledged that GM's practice of resetting the salary of transferred employees was "more likely" to result in "EEOC-related problems," and to "have an impact from both an EEOC and a Labor-Department-Equal Pay standpoint." *Id.* at 17-19. This report was withheld from plaintiffs during discovery and surfaced for the first time shortly before trial. R.6(230-32).

Mr. Hough and Harvey Krieger, GM's divisional Director of Salaried Personnel, testified for GM that they had conducted an "investigation" in response to the plaintiffs' complaints, that each complaint had been reviewed as it arose, and that the pay disparities were determined to be the result of uniform adherence to GM policies. R.6(106-108, 201-203, 228-29). The trial court found no credibility in this testimony. Pet. App. at 41a.[10] Despite the prior EEOC investigation of plaintiffs' com-

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[10] The district court's rejection of GM's alleged "investigation" was based on pervasive indications of unreliability. Hough's testimony was contradicted by his testimony in deposition two years earlier, before GM articulated its "transfer policy" or "good faith" defenses, that he had never heard of the women's pay complaints until after they filed this suit. P. Ex. 9a at 124. GM's alleged "investigation" offered two explanations for the pay disparity: the alleged "tranfer policy" and an alleged job dissimilarity. R.6(106-108, 201-203, 228-30). But the trial court found that neither explanation had any basis in fact. Pet. App. at 27a-28a, 38a n.4, 41a n.8.

plaints and the resulting determination of "cause," GM's senior labor counsel, Mark Flora, testified that GM asked no attorney, either staff or retained, to render any advice as to the legality of its "policy" or GM's other pay practices in question, until suit was filed. P. Fee Ex. 3 at 17-19.

The district court found on the record evidence that GM had acted with "reckless disregard" for its obligations under the Act. Pet. App. at 37a-39a. The court accordingly held that GM had acted "willfully," [11] triggering the three-year damages period of 29 U.S.C. § 255(a),[12] and that GM had failed to establish a "good faith" defense, mandating the award of liquidated damages. 29 U.S.C. § 216(b).

The Court of Appeals' Holding

GM appealed the district court's finding that the jobs in question were "equal," the district court's rejection of its "factor" defense, the finding of a willful violation, and the award of liquidated damages. The Eleventh Circuit affirmed these findings and conclusions. Pet. App. at 7a. The court of appeals also reversed and remanded for reduction of fees awarded against GM. Neither side has raised those fee issues to this Court.

The court of appeals quoted and affirmed the district court's finding that GM had failed to prove a sex-neutral "transfer policy." Pet. App. at 6a-7a. Citing *Corning Glass Works* v. *Brennan*, 417 U.S. 188 (1974) and

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[11] The court noted GM's conditioning of settlement discussions on resignation, R.3(74-76), could be considered "willful" per se under *Trans World Airlines* v. *Thurston*, 469 U.S. 111 (1985). Pet. App. at 39a n.5.

[12] The district court initially found GM's conduct "willful" for statute of limitations purposes, but denied liquidated damages. Pet. App. at 31a-32a. However, after receiving further evidence on the issues of damages and attorney's fees, and holding a second hearing on December 2, 1986, the district court modified its earlier opinion and awarded liquidated damages. Pet. App. at 40a-41a.

cases following it, the court observed that GM's practice of paying women lower wages than men because women were willing to work for less is precisely the evil the Act was designed to eliminate. *Id.* at 7a-8a. The court of appeals noted in dicta that, in its view, an employer's mere alleged reliance on "prior salary" should not in every instance constitute a defense to a proven pay disparity, because "prior salary" can be easily used as a pretext for discriminatory exploitation of the weaker position of women in the marketplace. *Id.* at 9a.

REASONS FOR DENYING THE WRIT

This case turns on its facts. GM seeks yet another review of the district court's finding that GM violated the Act and of the court's award of damages under the Act. But, on this record, the findings of the district court, affirmed by the court of appeals, are clearly correct, and mandate the lower courts' holdings against GM.

The district court's finding that GM violated the Act, and its award of damages under the Act, are the inevitable—and certainly not clearly erroneous—result of the court's thorough review of the wealth of evidence of a blatant, long-standing, unexcused and intentional practice on the part of GM to pay women "Follow Ups" less than men. The district court considered the dramatic evidence of discrimination and GM's failure to prove any sex-neutral policy or practice in justification of its conduct, and came to the necessary and simple conclusion that GM had violated the Act. The district court heard evidence that GM had refused to remedy its discriminatory practices, and that it had refused to investigate its obligations under the Act in the face of an EEOC finding of "cause." The district court rejected as lacking credibility the testimony of GM's officials that GM had conducted a contemporaneous investigation. Pet. App. at 41a. To this compelling evidence of GM's "willful" violation and lack of "good faith," the district

court applied the standard of "reckless disregard" announced by this Court in *Trans World Airlines* v. *Thurston*, 469 U.S. 111 (1985), and later adopted for actions under the Fair Labor Standards Act, including Equal Pay actions, in *McLaughlin* v. *Richland Shoe Co.*, 108 S. Ct. 1677 (1988). The district court found that GM evinced "reckless disregard" for its obligations under the Act and awarded damages accordingly. The court of appeals, not surprisingly, affirmed.

There is nothing in this record to warrant this Court's review. As to GM's liability, "The question of whether . . . an employer has sustained its burden of proving one of the exceptions to the Equal Pay Act are factual conclusions subject to the clearly erroneous standard of review." *Maxwell* v. *City of Tucson*, 803 F.2d 444, 447 (9th Cir. 1986). Here, the trier of fact found that GM's alleged "transfer policy" did not exist. That finding of the trier of fact, affirmed by the appellate court, is far from clearly erroneous; on the contrary, it is strongly supported by the record. In light of GM's failure to prove that it had any sex-neutral policy to justify the pay disparity proven by plaintiffs, the district court's determination that GM violated the Act was inevitable. As to the damages awarded, this Court just last Term approved the very same "reckless disregard" standard for Equal Pay Act damages that the lower courts applied here, *McLaughlin* v. *Richland Shoe Co.*, 108 S. Ct. 1677, and the evidence here clearly meets that standard.

There are no issues of law calling for decision here. GM's arguments are based on a record GM clearly wishes it had made below—but did not. As the lower courts held, GM's legal arguments simply lack the necessary factual predicate in this record. The lower courts' holding is dictated by, and confined to, the facts of this case. The petition should accordingly be denied.

I. There Was Ample Basis for the District Court's Finding That There Was No "Transfer Policy"

The district court had before it a wealth of evidence compelling its finding that the alleged transfer policy did not exist. First, the evidence showed that contrary to GM's allegations of a sex-neutral transfer policy, applied non-discriminatorily, of maintaining hourly wages on transfer, the fact was that women at the Athens facility received pay cuts upon transfer from hourly to salaried non-supervisory jobs while men received raises. The practice of resetting the salary of a transferring employee was, moreover, actually used to increase the pay disparity between male and female "Follow-Ups." Mr. Tanley was initially given an hourly title, allowing him to be "transferred" to the "Follow Up" job at a higher salary while doing the same salaried work throughout; Mr. Stephenson was recycled from hourly to salaried positions, raising his wages. GM's treatment of transferring employees was admittedly subjective, and was repeatedly characterized by GM's own management witnesses as handled on a "case-by-case" basis.

The district court found that GM failed to prove it had adopted a sex-neutral "transfer policy," and that instead, salary decisions were left to individual decision-makers. Almost without exception, pay policies at GM are written—but the alleged "transfer policy" was not.[13] Contrary to GM's assertion that the alleged "policy" was a necessary inducement to the hourly work force to move

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[13] Pet. App. at 28a. On appeal, GM argued that the district court required the policy be in writing to qualify as an affirmative defense and that this was error. The Eleventh Circuit rejected this argument, stating: "We do not read the district court's language . . . as relying on the absence of a writing per se. Rather, we read the district court as concluding that the absence of a writing in the context of other written policies provides independent support for its finding that the 'policy' was, in fact, an illegal practice." Pet. App. at 7a n.8. GM's petition raises this "straw man" argument again; it has no basis in the holdings below.

into salaried positions, the work force did not know about the alleged "policy," nor did GM's supervisors. Indeed, the head of plaintiffs' department at the Athens facility refused to testify that there was a "policy."

GM's arbitrary, case-by-case, unpublished practice regarding salaries of transferring employees stands in sharp contrast to well-established Equal Pay Act doctrine, developed in the analogous context of merit or seniority systems, that to constitute an affirmative defense under the Act, an alleged sex-neutral policy must be organized, structured, objective and employ predetermined criteria. *Maxwell* v. *City of Tucson*, 803 F.2d at 447; *Morgado* v. *Birmingham-Jefferson County Civil Defense Corps.*, 706 F.2d 1184, 1188 (11th Cir. 1983), *cert. denied*, 464 U.S. 1045 (1984); *E.E.O.C.* v. *Aetna Ins. Co.*, 616 F.2d 719, 725 (4th Cir. 1980); *Brennan* v. *Victoria Bank & Trust Co.*, 493 F.2d 896, 901 (5th Cir. 1974). The existence of the system should be communicated to the employees affected. *E.E.O.C.* v. *Whitin Machine Works, Inc.*, 635 F.2d 1095, 1097 (4th Cir. 1980).

Moreover, even if GM had the "transfer policy" it now describes, such a policy would fail to account for the pay disparity here, and thus would not constitute an adequate defense under the Act. The plain language of the Act prevents an employer from defeating a prima facie claim by proving a "factor" that fails fully to account for the pay disparity. *See e.g.*, *Brock* v. *Georgia Southwestern College*, 765 F.2d 1026, 1037 n.23 (11th Cir. 1985); *Hodgson* v. *Security National Bank*, 460 F.2d 57, 58, 61 and n.7 (8th Cir. 1972); *Marshall* v. *J.C. Penney, Inc.*, 464 F. Supp. 1166, 1181-85 (N.D. Ohio 1979). The alleged "transfer policy" could not account for the fact that two men hired "off the street" for the "Follow-Up" job, Tanley [14] and Greenlee, were

[14] Tanley's hourly title, with no hourly responsibilities, clearly does not affect this analysis: "Application of the equal pay standard is not dependent on job classifications or titles but depends rather on actual job requirements and performance." 29 C.F.R. § 1620.13(e).

paid a higher salary upon entry than that paid to Mrs. Nugent, who had also been hired "off the street." GM did not plead, and the trial court certainly did not find, any other sex-neutral "factor" to account for this disparity. Similarly, GM did not plead nor did the trial court find any sex-neutral "factor" to account for the entry-level salary paid plaintiff Sheila Ann Glenn. Glenn's "bona fide promotion" to the "Follow Up" job allowed her salary to be placed anywhere in the salary scale; yet GM chose to slot her salary below the lowest-paid male "Follow-Up."

More telling yet, the alleged "transfer policy" does not account for the continuing across-the-board pay disparity between male and female "Follow Ups." After the plaintiffs filed EEOC charges and the EEOC found in their favor, each received an "inequity adjustment." GM could have given plaintiffs an "inequity adjustment" to remedy the dramatic and continuing pay disparity at any time, in accordance with company policy. Yet GM chose to take no action until the EEOC found that GM had discriminated against plaintiffs, and even then, GM chose not to bring the plaintiffs' salaries up to that of the lowest-paid man.

The district court and the court of appeals explicitly found that the pay disparity at issue in this case was caused, not by any alleged policy relating to transfers, but by GM's "illegal practice" to "pay 'Follow Ups' what it takes to induce them to accept the employment." Pet. App. at 6a-7a and n.8, 28a, 38a n.4, 41a n.8. The finding that GM pays "what it takes" to hire "Follow Ups" fully accounts for the entry-level pay disparity among male and female "Follow Ups"—including the disparity between males and females both hired "off the street." GM's practice to pay "what it takes" is fully confirmed by the evidence, including the testimony of GM officials. Oddly, GM cites those very findings in asserting that the pay decisions at issue were not based on sex. In so doing,

GM ignores the fundamental intent of the Act: as this Court held in *Corning Glass Works* v. *Brennan*, paying "what it takes" is precisely the exploitation of the "weaker bargaining position of many women" that the Act was designed to correct. 417 U.S. at 206.

In short, the facts of record compel the district court's finding that GM violated the Act. GM seeks to have this Court ignore the overwhelming weight of the evidence below, and substitute GM's arguments for the findings of fact of the district court, affirmed by the court of appeals. The record simply does not present the issue GM wishes it did.

II. This Case Presents No Conflict with Any Court of Appeals Decision

The district court found, and the court of appeals affirmed, that GM's alleged "transfer policy" *did not exist*. Pet. App. at 6a-7a, 28a, 38a n.4, 41a n.8. Despite this clear factual finding and affirmance, GM comes before this Court pretending that it proved such a policy.[15] From that untrue assertion, GM proceeds to argue that the court of appeals held that such a policy could never constitute a defense under the Act, and that such holding (had it existed) would conflict with decisions of other circuits. But GM's legal argument lacks the essential factual foundation.

On page after page of the petition, GM asserts that it has a sex-neutral "transfer policy," which explains the pay disparity. Pet. at 2; *see id.* at 3, 4, 5, 6, 7, 9, 11, 13, 14, 15, 15 n.4, 16, 17, 18, 21, 23, 24, 26. Each of those assertions constitutes a mischaracterization of the record in this case. GM ignores that the trier of fact repeatedly and pointedly found, and the court of appeals affirmed, that the company had no such sex-

[15] In the petition, GM sometimes denominates the alleged "transfer policy" as a "transfer practice"—a sleight-of-hand presumably prompted by the refusal of GM's own management witness to say that GM had a policy.

neutral policy and that the alleged "policy" did not account for the pay disparity proven by plaintiffs.

GM asserts not only that it proved its policy—when it did not—but that its policy is a nationwide standard practice. There is not a shred of evidence in this record to support that assertion. No witness testified as to standard practices of American industry. No one tried to exonerate GM's particular practices other than GM officials. GM did not even argue to the trial or appellate courts that this case involved industry-wide employment procedures.[16] GM premises its argument for certiorari on such unfounded assertions, hoping to put an appealing facade on the less engaging facts of record.

GM argues to this Court, as it argued to the district court, the "hardly earth-shaking proposition that a corporate policy can be lawful if based on a factor other than sex." Pet. App. at 41a. The district court, of course, had no quarrel with that proposition, but found that it had no application to this case—"because there was no transfer policy." *Id.* Despite this ruling, GM argued to the Eleventh Circuit, as it does to this Court, that it had a sex-neutral "pay retention policy."

The court of appeals affirmed the district court's finding that no such policy existed and its holding that therefore GM had violated the Act. Pet. App. at 6a-7a. The court then went on to state that GM's "pay what it takes" practice exemplified the precise type of insidious discrimination that the Act was designed to correct. *Id.* at 7a-9a.

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[16] Amicus Equal Employment Advisory Council, in its prior appellate brief on behalf of GM, mentions alleged practices in various industries that are allegedly similar to GM's alleged "transfer policy." The simple fact, however, is that there is nothing in the trial record to support the EEAC assertions: none of their generalized statements have any evidentiary support whatsoever in this case, and the concerns they address are simply not raised by the record here.

In that context, the court commented in dicta [17] that in its view, an employer's mere invocation of prior salary, without more, should not be a sufficient showing of a non-discriminatory factor because alleged reliance on prior salary can be a pretext for discriminatory exploitation of the weaker position of women in the marketplace. *Id.* at 9a. The court commented that its view was consistent with that of the Ninth Circuit in *Kouba* v. *Allstate Ins. Co.*, 691 F.2d 873 (9th Cir. 1982). *Id.* at 9a.[18] The court further commented, in dicta, that its opinion "may contradict" the Seventh Circuit's opinion in *Covington* v. *Southern Ill. Univ.*, 816 F.2d 317 (7th Cir.), *cert. denied*, 108 S. Ct. 146 (1987).

In fact, *Covington* and this case represent consistent legal analysis applied to radically different facts. In *Covington*, the trier of fact found there *was* a sex-neutral pay retention policy; here, the trier of fact found *there was not.* The Seventh Circuit held that a female assistant professor's low starting salary relative to her male predecessor's was the result of his superior education and experience and the university's *proven* sex-

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[17] These portions of the opinion, on which GM relies, are dicta. The Eleventh Circuit affirmed the district court's finding of fact that GM had not proved a sex-neutral "transfer policy." Pet. App. at 6a-7a. The court of appeals then went on to comment on GM's legal theories based on the unproven alleged policy. *Id.* at 7a-9a. Those comments are classic dicta; they are unnecessary to the court's holding on the facts of this case. They do not create a conflict.

[18] In *Kouba*, the Ninth Circuit reversed the trial court for granting summary judgment without allowing the employer to develop the facts relating to its alleged sex-neutral pay policy, in which prior salary played a part. The Ninth Circuit warned the trial court that "prior salary . . . can easily be used to capitalize on the unfairly low salaries historically paid to women," 691 F.2d at 876. On remand, the trial court entered a consent judgment in favor of plaintiffs, *Kouba* v. *Allstate Ins. Co.*, CVS-77-99 LKK, (E.D. Calif., Sept. 28, 1984)—a fact GM omits to tell this Court.

neutral policy of maintaining the salaries of faculty members who were re-assigned within the university. 816 F.2d at 323-24. Not only did the Seventh Circuit affirm the trial court's finding that the university had a sex-neutral "pay-retention policy," *id.* at 321, but the court of appeals expressly noted that there was no issue of discriminatory practice. *Id.* at 323. Indeed, the Seventh Circuit expressly held that if the policy were discriminatorily applied, or if there were other evidence of sex-based discrimination, or if the entry-level salaries were discriminatorily set, a "pay-retention policy" would not suffice as a defense under the Act. *Id.*

Here, the trial court explicitly found *no* sex-neutral policy and plaintiffs offered substantial and compelling evidence of discriminatory exercise of the discretion vested in "individual decision-makers" to reset salaries upon transfer. Moreover, the telling admissions of Mr. Hough and Mr. Tanley, and GM's admissions in discovery, provided ample basis for the trial court finding that GM exploited the weaker position of women in the labor market. Considering the evidence in this case, it is apparent that the Seventh Circuit would have reached the same result as the Eleventh, had it been confronted with GM's practices.

GM cites to this Court a string of lower court decisions involving proven sex-neutral pay policies. As the district court and the court of appeals held, these cases are inapposite—because GM failed to prove such a policy.[19]

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[19] For example, GM inexplicably seeks to rely on the Fourth Circuit's decision in *E.E.O.C.* v. *Aetna Ins. Co.*, 616 F.2d 719 (4th Cir. 1980). In *Aetna*, the Fourth Circuit approved a merit system, using standards that GM's "case-by-case" practice clearly would not meet:

> Notwithstanding the absence of a writing requirement, a merit 'system' must be an organized and structured procedure whereby employees are evaluated systematically according to predetermined criteria . . . Moreover, to be recognized, it . . .

Simply put, GM has shown no court which would differ from the result below, on the facts of this case. On the other hand, the precedent is legion for the condemnation of both GM's "pay what it takes" practice, and the subjective and unfair salary slotting that led to the illegal pay differentials herein. *See, e.g., Corning Glass Works* v. *Brennan*, 417 U.S. at 209, 210; *Brock* v. *Georgia Southwestern College*, 765 F.2d 1026, 1032 (11th Cir. 1985); *Laffey v. Northwest Airlines, Inc.*, 567 F.2d 429 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978); *Brennan* v. *Owensboro-Daviess County Hosp.*, 523 F.2d 1013 (6th Cir. 1975), *cert. denied*, 425 U.S. 973 (1976).

In a misguided effort to argue that this decision is nevertheless inconsistent with the intent of the Act, GM has resorted in its arguments to the court of appeals and this Court to comparing its alleged "transfer policy" to the exception for "red-circle rates" recognized in the legislative history and regulations. *See* H.R. Rep. No. 309, 88th Cong. 1st Sess. 3; 29 C.F.R. § 1620.26. In fact, as the Eleventh Circuit noted, comparison of the facts of this case to "red-circling" only emphasizes the absence of a sex-neutral policy in this case. "Red-circle rates," as defined by the legislative sources cited by GM, are "unusual, higher than normal wage rates," H.R. Rep. No. 309, 88th Cong. 1st Sess. 3 (1963), intended for temporary implementation in "special cir-

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must fulfill two additional requirements: the employees must be aware of it; and it must not be based upon sex.

Id. at 725 (citations omitted). Similarly inapposite is *Derouin* v. *Louis Allis Div.*, 618 F. Supp. 221 (E.D. Wis. 1985), which involved a written policy manual, with a formula for setting pay, which was shown to have been implemented in a highly structured and sex-neutral fashion—in stark contrast to GM's arbitrary practice. GM resurrects other clearly irrelevant, largely procedural, decisions such as *Groussman* v. *Respiratory Home Care, Inc.*, 40 Fair Empl. Prac. Cas. (BNA) 122 (C.D. Cal. 1986), which turns on the pro se plaintiff's failure to respond properly to the affidavits supporting summary judgment for the employer.

cumstances," to resolve such short-term problems as that of keeping skilled workers on hand in spite of the employer's present inability to deploy those skills, *id.*, or an employee's inability to perform his regular work. *See* 29 C.F.R. § 1620.26. The legislative history makes clear, and the regulations expressly state, that the "red-circle" principle is only considered a bona fide defense for a "short period." *Id.* In contrast, GM put on no evidence that it transferred any male employee to the "Follow Up" position in order to preserve valuable skills for redeployment later, nor did it allege any other temporary problem which required payment of unequal wages to a few employees for a short period. On the contrary, GM's alleged "transfer policy" purported to justify permanent inequalities in pay and was advanced as an explanation for the fact that from 1975 until suit was filed in 1983, the highest-paid female "Follow Up" was paid less than the lowest-paid male "Follow Up."

GM's "red-circle" argument is a red herring: even if GM had proven its "transfer policy," which it did not, the "red-circle" principle would be inapplicable to this case. A fortiori, since GM failed to prove its "transfer policy," the Eleventh Circuit was clearly correct in concluding that the facts of this case contrasted so clearly with the exceptions envisioned by the legislative history that the result was to support the district court's finding against GM.[20] *See* Pet. App. at 8a-9a.

In summary, GM argues this Court should grant certiorari to determine whether a sex-neutral "pay reten-

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[20] By the questionable insertion of the word "only" in brackets in the language of the Eleventh Circuit opinion, and the removal of the relevant sentence from its context, GM tries to create the impression that the Eleventh Circuit narrowly limited the scope of the "factor" defense. Pet. at 7, 12, 14. The correct quotation, in context, makes clear that the court of appeals simply summarized the legislative history for purposes of comparing the exceptions envisioned therein to GM's inadequate showing of a sex-neutral policy. Pet. App. at 8a-9a.

tion policy" can be a "factor other than sex." But that issue is not presented by this case, because GM failed to prove any sex-neutral "pay retention policy" justified the pay disparity here. The lower courts did not broadly reject "pay retention policies" or "transfer policies" as a "factor" defense; they simply held there was no "pay retention policy" or "transfer policy" proven here.[21] This Court should deny GM's request to address issues not presented by the record.

III. The Record Fully Supports the District Court's Finding That GM Showed "Reckless Disregard" for Its Obligations Under the Act

In *Trans World Airlines, Inc.* v. *Thurston*, 469 U.S. 111 (1985), this Court announced a "reckless disregard" test to determine "willfulness" in the context of the liquidated damages provision of the Age Discrimination in Employment Act. 29 U.S.C. § 626(b). Last term, the Court gave plenary consideration to the proper standard for "willfulness" in the context of the Fair Labor Standards Act (including the Equal Pay Act), and also adopted the "reckless disregard" test. *McLaughlin* v. *Richland Shoe Co.*, 108 S. Ct. 1677 (1988). This case presents no reason for the Court again to consider the issue.

At the time of the trial court's decision in this case, the "in the picture" test set out in *Coleman* v. *Jiffy June Farms, Inc.*, 458 F.2d 1139, 1142 (5th Cir. 1971), *cert. denied*, 409 U.S. 948 (1972) was the "law of the circuit." At GM's urging, the trial court applied the more stringent "reckless disregard" standard adopted in *Thurston* —and found that GM's conduct showed "reckless disregard" for its obligations under the Act. Pet. App. at

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[21] Thus, contrary to the arguments of amicus EEAC on appeal, this case does not stand for the sweeping proposition that transfer pay policies may never constitute a "factor other than sex." The lower courts could not reach that issue because no transfer policy was proven.

36a-39a. The court further concluded that the more stringent *Thurston* standard was also applicable to the liquidated damages determination, and revised that portion of its holding to apply that standard in light of the facts adduced at the second hearing. *Id.* at 40a-41a.

GM now urges this Court to take issue with the lower courts' prescient application of the "reckless disregard" standard to the facts of this case. But there is no quesiton that the facts of this case squarely fit the "reckless disregard" test enunciated in *Thurston* and made applicable to the Equal Pay Act in *Richland Shoe.*

That standard is not satisfied merely by a showing of negligent conduct or a "good-faith" but incorrect assumption that a pay plan complied with the Act. 108 S. Ct. at 1682. But the evidence in this case showed GM's intentional disregard for "clear signs that its practices were illegal." Pet. App. at 38a. The undisputed evidence was that GM's top management was aware since 1975 that its practices on transfer and hiring raised Equal Pay problems. Also, top management at the Athens facility knew that these practices had in fact caused a dramatic pay disparity between male and female "Follow Ups." The undisputed evidence was that from 1975 to the date suit was filed, the highest-paid plaintiff made less than the lowest-paid male "Follow Up." The undisputed evidence showed that despite repeated complaints from plaintiffs, GM did nothing to remedy the pay disparity until the EEOC found in plaintiffs' favor. The stipulated facts are that after the EEOC finding of "cause," GM gave each plaintiff an "inequity adjustment"—which it could have given plaintiffs at any time, consistent with company policy—but, in the face of the EEOC determination, intentionally left the highest-paid woman earning less than the lowest-paid man.[22]

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[22] The district court correctly concluded that in light of this overwhelming evidence of refusal to address a known pay disparity, the mere fact that some GM officials may have believed company policy

GM's Senior Labor Counsel testified that GM sought no legal advice regarding its responsibilities under the Act, or the legality of the pay practices affecting plaintiffs, until this suit was filed—despite the EEOC's investigation and adverse determination prior to this suit. GM's failure to investigate its legal obligations or to reform its pay practices in the face of an EEOC finding of discrimination against plaintiffs is further evidence of "reckless disregard" under *Thurston* and *Richland Shoe*.

GM's conduct during the trial itself evinced intentional disdain for its obligations under the Act. GM put on testimony that the district court found to lack credibility, claiming it had conducted a contemporaneous investigation—a tacit admission that GM knew the Act required it to amend its practices. GM's presentation of this misleading testimony to the trial court is further evidence of GM's flagrant reckless disregard for the requirements of the Act and for the authority of the federal courts charged with enforcing it.

On the record, the lower courts had ample evidence to determine that GM's conduct showed "reckless disregard" as this Court has defined that test in *Thurston* and *Richland Shoe*. In doing so, the lower courts applied the correct legal standard. There is no issue for this Court.

This case involves a straightforward application of the Act by the lower courts to remedy precisely the evil Congress sought to abolish: paying women lower wages than men because women are willing to work for less. This factual record fully supports the district court's finding that GM violated the Act and the court's award of damages under the Act. As the district court noted, this is a "routine disparate treatment case," Pet. App. at 42a—a decision dictated by and confined to its facts, presenting no issue worthy of this Court's review.

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authorized their arbitrary and discriminatory increase or decrease of salary on transfer would not prevent a finding that GM acted with "reckless disregard." Pet. App. 40a-41a.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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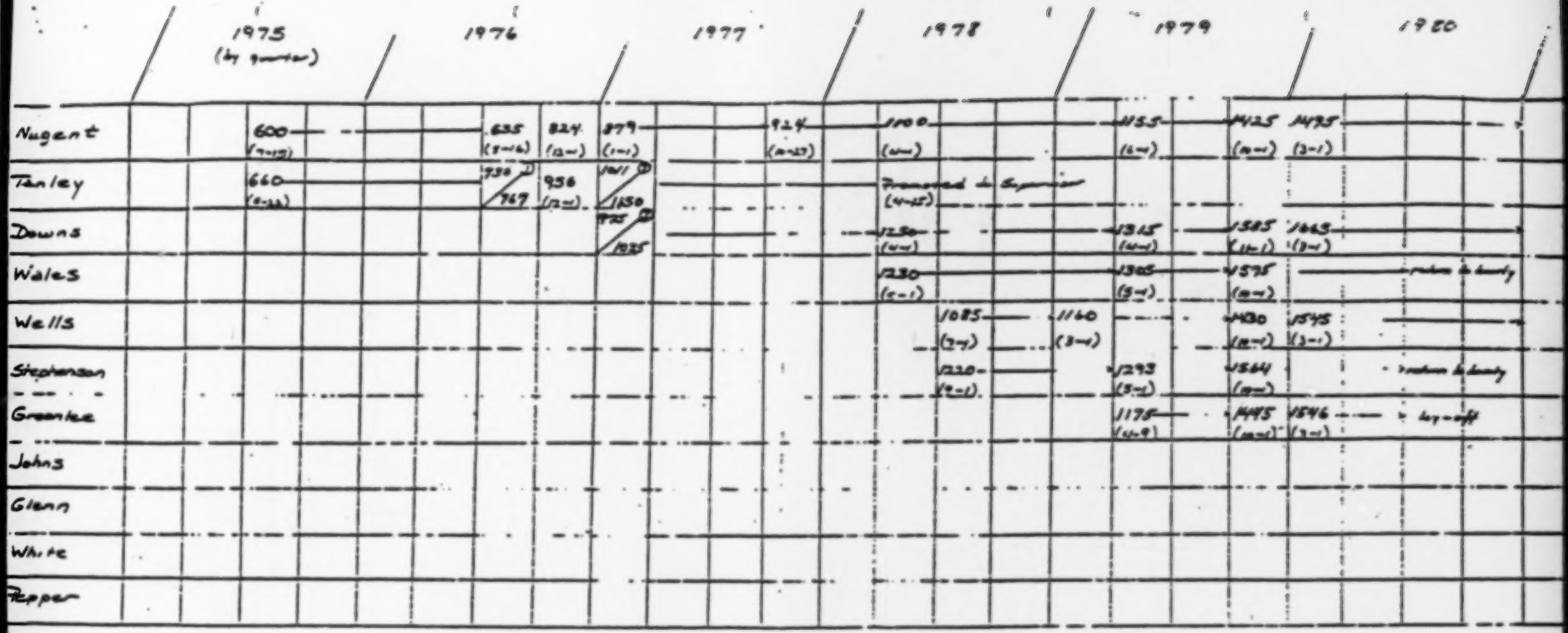
October, 1988

APPENDIX



Key

- Promote
- Follow Up
- Follow Up

1976

① Pres A, base salary $730.00, 2/16/76;
Brent, base salary $767, 9/16/76.

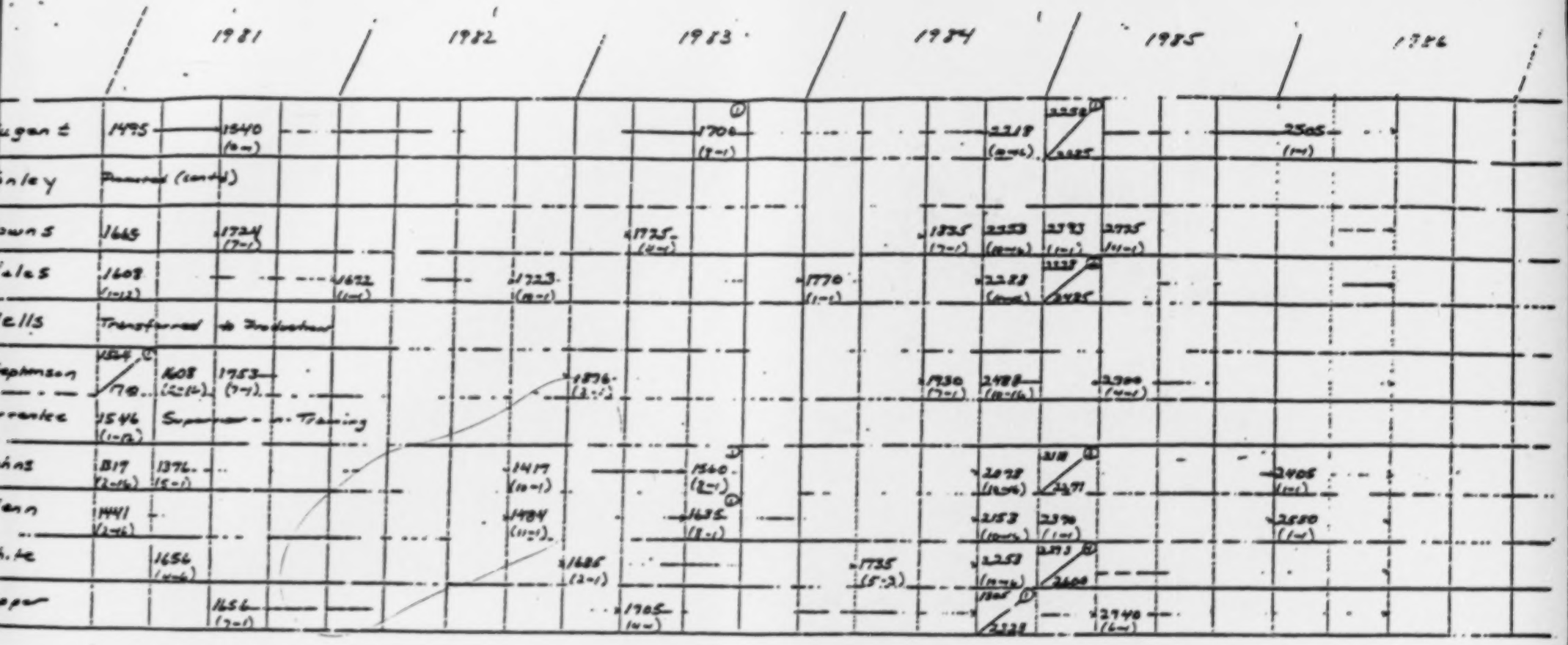
1977

① Other, base salary $1100, 4/1/77;
Brent, base salary $1150, 2/1977

① Prof. Pres., base salary $935, 2/24/77
Brent, base salary $1035, 2/1977

CV-83-V-5777-S

PLAINTIFF'S EXHIBIT 426
Admitted



1981

① Base salary ($1564) upon return from hourly (1-12-81); Ron A to Supervisor-in-training, base salary $1700, 2-16-81.

1983

① Longevity adjustment

1984

① Merit, base salary $1895, 1-1-84; Cola Trans, base salary $2283, 10-16-84

1985

① Cola Trans ($2258) and merit ($2325) effective 1-1-85.

② Cola Trans, $2383, 1-1-85; Merit, base salary $2735, 1-1-85.

③ Cola Trans ($2118) and merit ($2271) effective 1-1-85.

④ Cola Trans, $2293, 1-1-85; Prof Rem, $2600, 3-1-85.

ATTACHMENT III

Name	Address	Sex	Hrly. Rate Before Transf.	Monthly Rate After Transf.	Date Of Transf.	Job Descript After Transf.
Alexander, Carl	P.O. Box 311 Athens, AL 35611	M	11.73(2,032.81)	033.12	7-31-81	Production Supervisor
Allen, Kenneth	Same	M	9.28(1,608,22)	1.710.00	2-1-81	Rec./Shipping Foreman
Berzett, Larry	Same	M	9.73(1,686.21)	1,922.80	11-9-81	Production Supervisor
Blankenship, John	Same	M	11.18(1,937.49)	2,000.00	2-24-81	Production Supervisor
B on, Vance	Same	M	9.56(1,656.75)	1,922.80	6-9-82	Production Supervisor
Boshell, Herbert	Same	M	11.39(1,973.89)	1,973.90	5-18-81	Production Supervisor
Broadway, Billy	Same	M	11.39(1,973.89)	2,000.00	5-18-81	Asso. Tool Trouble Shooter
Brock, Roger	Same	M	7.63(1,322.28)	1,375.00	11-6-78	Supervisor Trainee
Brock, William	Same	M	6.75(1,169.78)	1,710.00	3-16-81	Production Supervisor
Bush, Henry	Same	M	9.03(1,564.90)	1,579.32	4-16-81	Officer—Plant Security
Childers, William	Same	M	5.51(954.88)	1,030.00	7-16-76	Scrap Reduction Coordinator
Cox, Linda	Same	F	9.26(1,604.76)	1,339.92	9-8-80	Officer—Plant Security
C g, Travis	Same	M	5.25(909.83)	1,000.00	11-17-75	Asso. Tool Trouble Shooter
Davis, Thomas	Same	M	9.28(1,608.22)	1,710.00	4-6-81	Production Supervisor
Day, Carolyn	Same	F	7.23(1,252.96)	1,375.00	10-16-78	Supervisor Trainee
Day, Dewey III	Same	M	9.45(1,637.69)	1,637.70	3-16-81	Investigator—Suggestion
Dodd, John	Same	M	8.95(1,551.04)	1,500.00	6-1-78	Supervisor—Production
Downs, Stephen	Same	M	5.38(932.35)	975.00	2-21-77	Asso. Follow Up Tool & Die
Endy, Jerry	Same	M	4.17(722.60)	970.00	7-16-76	Asso. Production Supervisor
Edgemon, Billy	Same	M	3.66(634.28)	970.00	7-16-76	Asso. Inspection Supervisor
Edney, Douglas	Same	M	7.17(1,242.56)	1,200.00	4-1-78	Supervisor—Inspection
Finley, William	Same	M	9.22(1,597.83)	1,600.00	10-16-78	Scrap Reduction Coordinator

Name	Address	Sex	Hrly. Rate Before Transf.	Monthly Rate After Transf.	Date Of Transf.	Job Descript After Transf.
Floyd, Kenneth	Same	M	11.73(2,032.81)	2,093.78	11-9-81	Production Supervisor
Freeman, Horace	Same	M	6.86(1,188.84)	1,280.76	6-16-77	Supervisor—Inspection
Fuller, Harry	Same	M	5.04(873.43)	1,200.00	3-1-77	Asso. Production Supervisor
Gholston, Brenda	Same	F	6.35(1,100.46)	1,040.00	4-25-77	Blue Print Operator
Gilbert, Nelson	Same	M	11.39(1,973.89)	2,033.10	1-12-81	Supervisor—Production
Gilchrist, Jack	Same	M	4.17(722.66)	970.00	2-16-76	Asso. Production Supervisor
Gray, Kenneth	Same	M	5.51(954.88)	1,030.00	7-16-76	Asso. Tool Trouble Shooter
Gray, Willard	Same	M	5.40(935.00)	1,089.16	12-1-76	Asso. Inspection Supervisor
H , Betty	Same	F	3.39(587.49)	585.00	9-20-76	Employment Write-up Clerk
Haley, Timothy	Same	M	7.39(1,280.69)	1,375.00	2-16-79	Supervisor Trainee
Hanners, Douglas	Same	M	11.18(1,937.49)	2,000.00	3-9-81	Asso. Tool Trouble Shooter
Harris, Timothy	Same	M	7.39(1,280.69)	1,375.00	2-16-79	Supervisor Trainee
Haynes, Irene	Same	F	7.23(1,252.96)	950.00	4-16-79	Clerk Typist
Hazel, Jerry	Same	M	9.73(1,686.21)	1,922.80	6-9-82	Production Supervisor
Hembree, Danny	Same	M	7.70(1,334.41)	1,375.00	10-16-78	Supervisor Trainee
Henderson, Gregory	Same	M	8.65(1,499.05)	1,000.00	6-12-78	Foreman Trainee
Hendrix, Jimmy	Same	M	3.76(651.61)	970.00	8-9-76	Asso. Inspection Supervisor
Hester, Harvey	Same	M	9.45(1,637.69)	1,710.00	3-9-81	Supervisor—Production
Hill, Dwight	Same	M	7.39(1,280.69)	1,350.00	2-15-79	Supervisor Trainee
Holder, Charles	Same	M	5.25(909.83)	1,000.00	7-7-75	Supervisor Production Trainee
Holmes, Larry	Same	M	9.56(1,656.75)	1,922.80	8-2-82	Production Supervisor
Howell, Richard	Same	M	6.86(1,188.84)	1,325.00	2-16-78	Rec. & Shipping Foreman
Hudson, Steven	Same	M	7.39(1,280.69)	1,375.00	2-16-79	Supervisor Trainee
Jernigan, Bobby	Same	M	11.39(1,973.89)	2,033.10	1-21-81	Supervisor Production

Johnson, Billy	Same	M	4.17(722.66)	970.00	7-16-76	Asso. Production Supervisor
King, Carolyn F.	Same	F	5.08(880.36)	900.00	3-1-76	Asso. Dispatcher
Kirby, Mikie	Same	M	10.08(1,746.86)	1,980.00	7-28-83	Production Supervisor
Kirby, Wayne	Same	M	7.11(1,232.16)	1,330.00	9-1-77	Supervisor Production
Lambert, Jerry	Same	M	7.32(1,268.56)	1,360.00	3-27-78	Supervisor Production
Lenox, Jimmy	Same	M	8.59(1,488.65)	1,580.00	8-4-77	Supervisor Machine Repair
Le n, Carl	Same	M	5.41(937.55)	1,030.00	7-16-76	Asso. Production Supervisor
Magnusson, Harvey	Same	M	9.79(1,696.61)	1,780.00	2-1-81	Supervisor Production
Martin, Charles	Same	M	7.02(1,216.57)	1,315.00	6-12-78	Foreman Trainee
Maxwell, Cozie	Same	F	6.96(1,206.17)	1,250.00	9-1-77	Asso. Disptacher
McKee, Steven	Same	M	9.28(1,608.22)	1,710.00	4-1-81	Production Supervisor
Mims, Robert	Same	M	7.93(1,374.27)	1,400.00	2-16-79	Supervisor Trainee
Mitchell, Harold	Same	M	10.08(1,746.86)	1,922.80	8-10-82	Production Supervisor
Smith, Thomas	Same	M	5.41(937.55)	1,100.00	1-5-76	Asso. Tool Room Supervisor
Snoddy, Harry	Same	M	5.41(937.55)	1,000.00	1-5-76	Asso. Production Supervisor
Spurlin, Jere	Same	M	7.63(1,322.28)	1,400.00	2-16-79	Supervisor Trainee
Steele, Trillmon	Same	M	5.41(937.55)	1,030.00	7-16-76	Asso. Production Supervisor
Stephenson, Robert	Same	M	6.76(1,171.51)	1,220.00	9-1-78	Asso. Follow-Up Tool & Die
Stephenson, Arthur	Same	M	7.63(1,322.28)	1,375.00	10-16-78	Supervisor Trainee
Stewart, John	Same	M	9.28(1,608.22)	1,612.26	2-24-81	Officer--Plant Security
Stone, James	Same	M	7.09(1,228.70)	1,350.00	2-16-79	Supervisor—Trainee
Stout, Morris	Same	M	7.11(1,232.16)	1,280.76	5-16-77	Supervisor—Inspection
Straub, Theodore	Same	M	7.39(1,280.69)	1,375.00	10-16-78	Supervisor—Trainee
Tanley, J. Richard	Same	M	3.50(606.55)	660.00	9-22-75	Asso. Follow-up Tool & Die
Taylor, Charles	Same	M	8.59(1,488.65)	1,516.00	4-16-77	Scrap Reduction Coor.
Taylor, Mike	Same	M	9.45(1,637.69)	1,612.26	4-16-81	Officer—Plant Security
T r, James Jr.	Same	M	9.56(1,656.75)	1,922.80	5-3-82	Production Supervisor
Terry, Anthony	Same	M	9.63(1,668.88)	1,922.80	6-1-83	Production Supervisor
Terry, Bobby	Same	M	3.30(571.89)	700.00	1-5-76	Asso. Dispatcher

Name	Address	Sex	Hrly. Rate Before Transf.	Monthly Rate After Transf.	Date Of Transf.	Job Descript After Transf.
Thomas, Johnny	Same	M	2.99(518.17)	640.80	2-16-76	Officer—Plant Security
Vassar, Walter	Same	M	9.63(1,668.88)	1,710.00	2-1-81	Rec. & Shipping Foreman
Wagner, Bradford	Same	M	10.08(1,746.86)	1,950.00	11-8-83	Production Supervisor
Wales, Harold	Same	M	7.02(1,216.57)	1,230.00	5-1-78	Asso. Follow Up Tool & Die
Wallace, Jerius	Same	M	7.17(1,242.56)	1,330.00	12-1-77	Supv.—Production
Washco, Gerald	Same	M	9.42(1,632.49)	1,750.00	3-16-81	Production Supervisor
Watkins, Philip	Same	M	7.72(1,337.88)	1,375.00	3-1-77	Asso. Maint. Supervisor
Wheeler, Robert	Same	M	5.41(937.55)	1,030.00	3-1-76	Asso. Tool Trouble Shooter
White, Billy	Same	M	9.28(1,608.22)	1,656.46	4-6-81	Asso. Follow Up Tool & Die
White, Richard	Same	M	9.22(1,597.83)	1,600.00	10-16-78	Supervisor Trainee
Wiley, Ben	Same	M	7.63(1,322.28)	1,375.00	10-16-78	Supervisor Trainee
Woodall, David	Same	M	3.50(606.55)	970.00	7-16-76	Asso. Inspection Supervisor
Wright, Donald	Same	M	5.41(937.55)	1,000.00	2-2-76	Asso. Inspection Supervisor
Wright, Kerry	Same	M	7.07(1,225.23)	1,320.00	12-1-77	Inspection Foreman
Wydner, John	Same	M	9.02(1,563.17)	1,570.00	10-16-78	Supervisor Trainee